

**NLWJC - KAGAN**

**STAFF & OFFICE - D.C. CIRCUIT**

**BOX 001 - FOLDER 002 DC**

**Elena Kagan - D.C. Circuit; Kagan  
Letter**

# FOIA MARKER

**This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.**

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**Collection/Record Group:** Clinton Presidential Records

**Subgroup/Office of Origin:** Counsel Office

**Series/Staff Member:** Eric Angel

**Subseries:**

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**OA/ID Number:** 18280

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**Folder Title:**

Elena Kagan - D.C. Circuit; Kagan Letter

**Stack:**

**V**

**Row:**

**7**

**Section:**

**4**

**Shelf:**

**3**

**Position:**

**1**

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	04/13/2000	P2, P5
002a. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5
002b. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 03/2000	P2, P5
003. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	04/13/2000	P2, P5
004. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 03/2000	P2, P5
005a. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5
005b. form	Financial Disclosure Report for Calendar Year 1998 (4 pages)	02/05/2000	P6/b(6)
006. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5
007. letter	Beth Nolan to Orrin Hatch re: Elena Kagan, incomplete copy (1 page)	ca. 03/2000	P2, P5
008. letter	Beth Nolan to Orrin Hatch re: Elena Kagan, incomplete copy (1 page)	ca. 03/2000	P2, P5
009. letter	Beth Nolan to Orrin Hatch re: Elena Kagan, incomplete copy (1 page)	ca. 03/2000	P2, P5
010. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 03/2000	P2, P5

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Eric Angel  
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### FOLDER TITLE:

Elena Kagan - D.C. Circuit; Kagan Letter

2009-1006-F  
kh555

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]  
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
P3 Release would violate a Federal statute [(a)(3) of the PRA]  
P4 Release would disclose trade secrets or confidential commercial or  
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P5 Release would disclose confidential advice between the President  
and his advisors, or between such advisors [(a)(5) of the PRA]  
P6 Release would constitute a clearly unwarranted invasion of  
personal privacy [(a)(6) of the PRA]

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b(2) Release would disclose internal personnel rules and practices of  
an agency [(b)(2) of the FOIA]  
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personal privacy [(b)(6) of the FOIA]  
b(7) Release would disclose information compiled for law enforcement  
purposes [(b)(7) of the FOIA]  
b(8) Release would disclose information concerning the regulation of  
financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information  
concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed  
of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C.  
2201(3).

RR. Document will be reviewed upon request.

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012. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5
013. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5
014. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5
015. letter	Beth Nolan to Orrin Hatch re: Elena Kagan; incomplete copy (2 pages)	ca. 03/2000	P2, P5
016. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 02/2000	P2, P5
017. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 02/2000	P2, P5
018. list	Suggested Inserts to Nolan Letter (1 page)	n.d.	P2, P5
019. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 03/2000	P2, P5
020. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 02/2000	P2, P5
021. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 02/2000	P2, P5
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### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Eric Angel  
OA/Box Number: 18280

### FOLDER TITLE:

Elena Kagan - D.C. Circuit; Kagan Letter

2009-1006-F  
kh555

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
023. note	Phone No. (Partial) (2 pages)	n.d.	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Eric Angel  
OA/Box Number: 18280

### FOLDER TITLE:

Elena Kagan - D.C. Circuit; Kagan Letter

2009-1006-F  
kh555

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001. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	04/13/2000	P2, P5

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OA/Box Number: 18280

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# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002a. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Eric Angel  
OA/Box Number: 18280

### FOLDER TITLE:

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2009-1006-F  
kh555

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C. Closed in accordance with restrictions contained in donor's deed of gift.

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## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002b. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 03/2000	P2, P5

### COLLECTION:

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Counsel's Office  
Eric Angel  
OA/Box Number: 18280

### FOLDER TITLE:

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2009-1006-F  
kh555

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**THE WHITE HOUSE**  
**WASHINGTON**

April 7, 2000

Honorable Don Young  
Chairman  
Committee on Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Young:

This responds to your letter to White House Chief of Staff John Podesta dated March 22, 2000, regarding the Committee's Warner Creek inquiry. Your letter requests the production of any e-mails not previously produced to the Committee, as well as documents with respect to which the White House previously has sought an accommodation from the Committee.

As you know, we recently learned that two computer programming errors affected the electronic archiving of incoming e-mail to certain user accounts within the Executive Office of the President. In addition, while investigating these programming errors, we also learned that e-mail on the computer server of the Office of the Vice President has not been fully managed by the White House archiving system. We are taking steps to address these matters, including retaining the services of private contractors who will restore backup tapes containing un-archived e-mail records to a keyword-searchable format. When the affected e-mail is searchable, we will review and produce to the Committee any additional documents that may be responsive to the Warner Creek subpoena.

During the course of this investigation, the White House has requested an accommodation with respect to just four documents: (1) multiple copies of a memorandum to the President and Vice President of the United States; (2) talking points for the President of the United States; (3) undated notes of a telephone conversation between Elena Kagan and Dinah Bear regarding the timber-Oregon situation; and (4) notes of Elena Kagan dated July 12, 1996, regarding Warner Creek. When we provided the Committee with a log of these documents, we invited discussion of the matter, and reiterated our desire to reach an accommodation shortly thereafter. See 6/18/99 and 8/17/99 Letters from Senior Associate White House Counsel Steven

Honorable Don Young

April 7, 2000

Page 2

F. Reich to Majority Counsel Doug Fuller. Regrettably, our efforts to reach an accommodation have been met with the Committee's refusal even to discuss the subject.

From the beginning of this investigation, we have sought to work cooperatively with the Committee. Indeed, it is the policy of the White House "to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch." Memorandum from President Reagan for the Heads of Executive Departments and Agencies Regarding Procedures Governing Responses to Congressional Requests for Information at 1 (Nov. 4, 1982). See also United States v. American Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977) ("each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. This aspect of our constitutional scheme avoids the mischief of polarization of disputes"). As President Reagan observed, when there is a dispute arising out of a congressional request for information, "good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches." *Id.* Thus, when the Executive Branch seeks to protect an interest in documents sought by Congress, it does not immediately invoke executive privilege, but instead attempts -- as we have done here -- to negotiate a good faith resolution of the conflict.

Over the past months, the Committee's refusal even to consider an accommodation of our interest in these documents has had the unfortunate effect of creating conflict where none need have existed. Because we remain committed to avoiding an unnecessary constitutional confrontation, I reiterate our desire to reach an accommodation in this matter. More specifically, we remain willing to allow the Committee and/or designated staff to review the documents at a time and place of the Committee's choosing. I respectfully suggest that a review of the documents by the Committee would avoid escalation of this conflict, and would serve the interests of both the Executive and Legislative Branches by finally bringing this dispute to a close.

Sincerely,



Beth Nolan-  
Counsel to the President

cc: Honorable George Miller  
Ranking Minority Member

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**Harvard Law School**

**1525 Massachusetts Avenue  
Griswold 4 North  
Cambridge, Massachusetts 02138**

**FAX # (617) 496-5156**

TO: Sarah Wilson

Organization: \_\_\_\_\_

Location: \_\_\_\_\_

FAX Number: 202 - 456 - 2146

\*\*\*\*\*

FROM: Elena Kagan

HLS Address: \_\_\_\_\_

Telephone: 617-495-9083

Total # of Pages including cover sheet: \_\_\_\_\_

Date sent: \_\_\_\_\_



## HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

Sarah —

Here is (1) the current version of the  
Senate form and (2) the edits you, Eric and I  
thought would make sense in our last conversation.  
Both, as you note, may change depending on  
what you folks decide to do w/ regard to the  
documents. Please recall that we spoke as  
well of adding some language to the top or bottom  
of the letter ~~which says to make that's fair~~  
to the effect that <sup>simple</sup> fairness requires giving me the  
opportunity to clear my name in a hearing (or something  
like that). Thanks much for everything—

Elena

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**WASHINGTON**

April 7, 2000

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Counsel to the President

cc: Honorable George Miller  
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**Harvard Law School**

1525 Massachusetts Avenue  
Griswold 4 North  
Cambridge, Massachusetts 02138

**FAX # (617) 496-5156**TO: SARAH WILSON

Organization: \_\_\_\_\_

Location: \_\_\_\_\_

FAX Number: 202-456-1647

\*\*\*\*\*

FROM: PROF. KAVAN

HLS Address: \_\_\_\_\_

Telephone: 617-496-1716Total # of Pages including cover sheet: 8Date sent: 3/6/00



## HARVARD LAW SCHOOL

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ELENA KAGAN  
VISITING PROFESSOR OF LAW

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March 6, 2000

Hon. Orrin G. Hatch  
Chairman, Senate Committee on the Judiciary  
SD-224 Dirksen Senate Office Building  
Washington, D.C. 20510-6275

Dear Chairman Hatch:

Attached please find supplemental responses to my Senate Judiciary Committee Questionnaire for my nomination to the Court of Appeals for the District of Columbia Circuit. Thank you for your continuing assistance in this matter.

Very truly yours,

Elena Kagan

cc: Hon. Patrick Leahy, Ranking Minority Member

Elena Kagan

SUPPLEMENTAL RESPONSES TO  
SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. Biographical Information

Question 12

I introduced the two speakers at an event sponsored by the Harvard Law Review relating to the Supreme Court's most recent term (12/2/99, Cambridge, MA). I made no substantive remarks, and I have no notes for these introductions.

II. Financial Data

Question 4

I am attaching an updated financial disclosure report.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005a. questionnaire	Supplemental Responses to Senate Judiciary Committee Questionnaire (1 page)	n.d.	P2, P5

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Eric Angel  
OA/Box Number: 18280

### FOLDER TITLE:

Elena Kagan - D.C. Circuit; Kagan Letter

2009-1006-F  
kh555

### RESTRICTION CODES

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RR. Document will be reviewed upon request.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005b. form	Financial Disclosure Report for Calendar Year 1998 (4 pages)	02/05/2000	P6/b(6)

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011. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	04/13/2000	P2, P5
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**WILDER & GREGORY**  
Attorneys At Law  
707 East Main Street, Suite 1000  
P.O. Box 518  
Richmond, Virginia 23264-0518

Telephone (804) 643-8401  
Telecopier (804) 648-2707



**TELECOMMUNICATION MEMORANDUM**

Date: April 13, 2000

Time: 3:45 p.m.  
~~9:40 a.m.~~

Please Deliver the following pages to:

Name(s)	Company Number	Fax No.
<u>Eric Angel, Esquire</u>	<u>White House Counsel</u>	<u>(202) 456-1647</u>
_____	_____	_____
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Message From: Roger L. Gregory

Number of Pages (including cover sheet): 18 12

Special Instructions: Personal & Confidential

**IF ANY DIFFICULTY IS EXPERIENCED WITH THIS TRANSACTION**  
**PLEASE CALL (804) 643-8401**

Transmitter: \_\_\_\_\_

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Elena Kagan

SUPPLEMENTAL RESPONSES TO  
SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. Biographical Information

Question 12

I introduced the two speakers at an event sponsored by the Harvard Law Review relating to the Supreme Court's most recent term (12/2/99, Cambridge, MA). I made no substantive remarks, and I have no notes for these introductions.

II. Financial Data

Question 4

I am attaching an updated financial disclosure report.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
016. letter	Beth Nolan to Orrin Hatch re: Elena Kagan (3 pages)	ca. 02/2000	P2, P5

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Eric Angel  
OA/Box Number: 18280

### FOLDER TITLE:

Elena Kagan - D.C. Circuit; Kagan Letter

2009-1006-F  
kh555

### RESTRICTION CODES

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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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018. list	Suggested Inserts to Nolan Letter (1 page)	n.d.	P2, P5

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**Harvard Law School****1525 Massachusetts Avenue****Griswold 4 North****Cambridge, Massachusetts 02138****FAX # (617) 496-5156**TO: Sarah WilsonOrganization: White House

Location: \_\_\_\_\_

FAX Number: 202 456 1647

\*\*\*\*\*

FROM: Elena Kagan

HLS Address: \_\_\_\_\_

Telephone: 617-495-5082Total # of Pages including cover sheet: 5

Date sent: \_\_\_\_\_

Sarah -

Sorry. This is  
a very slightly  
revised version.

# Withdrawal/Redaction Marker

## Clinton Library

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Eric Angel  
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### FOLDER TITLE:

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2009-1006-F  
kh555

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### FOLDER TITLE:

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kh555

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## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
023. note	Phone No. (Partial) (2 pages)	n.d.	P6/b(6)

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Counsel's Office  
Eric Angel  
OA/Box Number: 18280

### FOLDER TITLE:

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2009-1006-F  
kh555

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Michael Kunkardt

P6/(b)(6)

Duane Law

[023]

✓ Larry  
Beneat

P6/(b)(6)

Patsy Cavendish

P6/(b)(6)

Margot Morris

Asst

Ambassador, Sherman

supports Peter Balk

P6/(b)(6)

✓ Sarah Jaffrey / Biden

P6/(b)(6)

Griffin netg.

P6/(b)(6)

Cynette Norton

✓ ~~\_\_\_\_\_~~  
Glynnia O'Leary

P6/(b)(6)

P6/(b)(6)

✓ NSC Smith & Wilson question -

69191

Ann Witkowski

Joshua  
Corydon

Fern - Podesta -

67256 Ronnie Chase / Penny Thompson  
from or weds.

Christina Wisdom - this Thursday last day

Bill Christian

P6/(b)(6)

P6/(b)(6)

Sunday John  
will talk to Senzel  
~~on Monday~~

update forms -

house.gov

reform

b'cast

90.1

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Winnie Brinkley - OPD -

Ken + Julie Malley

P6/(b)(6)

John Hatt -

P6/(b)(6)